

DRUG PARAPHERNALIA PENALTY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill addresses drug paraphernalia.

Highlighted Provisions:

This bill:

- ▶ removes certain enhancements for offenses related to drug paraphernalia; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-37-8, as last amended by Laws of Utah 2017, Chapter 330

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **58-37-8** is amended to read:

58-37-8. Prohibited acts -- Penalties.

(1) Prohibited acts A -- Penalties and reporting:

(a) Except as authorized by this chapter, it is unlawful for [any] a person to knowingly and intentionally:



- 28 (i) produce, manufacture, or dispense, or to possess with intent to produce,
29 manufacture, or dispense, a controlled or counterfeit substance;
- 30 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
31 arrange to distribute a controlled or counterfeit substance;
- 32 (iii) possess a controlled or counterfeit substance with intent to distribute; or
33 (iv) engage in a continuing criminal enterprise where:
- 34 (A) the person participates, directs, or engages in conduct that results in ~~[any]~~ a
35 violation of ~~[any provision of Title 58,]~~ Chapters 37, Utah Controlled Substances Act, 37a,
36 Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled
37 Substance Precursor Act, or 37d, Clandestine Drug Lab Act, that is a felony; and
- 38 (B) the violation is a part of a continuing series of two or more violations of ~~[Title 58]~~,
39 Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b,
40 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,
41 Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or
42 more persons with respect to whom the person occupies a position of organizer, supervisor, or
43 any other position of management.
- 44 (b) ~~[Any]~~ A person convicted of violating Subsection (1)(a) with respect to:
- 45 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled
46 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second
47 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or
48 subsequent conviction is guilty of a first degree felony;
- 49 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
50 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and
51 upon a second or subsequent conviction is guilty of a second degree felony; or
- 52 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a
53 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree
54 felony.
- 55 (c) ~~[Any]~~ A person who has been convicted of a violation of Subsection (1)(a)(ii) or
56 (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the
57 trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on
58 the person or in the person's immediate possession during the commission or in furtherance of

59 the offense, the court shall additionally sentence the person convicted for a term of one year to
60 run consecutively and not concurrently; and the court may additionally sentence the person
61 convicted for an indeterminate term not to exceed five years to run consecutively and not
62 concurrently.

63 (d) [~~Any~~] A person convicted of violating Subsection (1)(a)(iv) is guilty of a first
64 degree felony punishable by imprisonment for an indeterminate term of not less than seven
65 years and which may be for life. Imposition or execution of the sentence may not be
66 suspended, and the person is not eligible for probation.

67 (e) The Administrative Office of the Courts shall report to the Division of
68 Occupational and Professional Licensing the name, case number, date of conviction, and if
69 known, the date of birth of each person convicted of violating Subsection [~~(2)~~] (1)(a).

70 (2) Prohibited acts B -- Penalties and reporting:

71 (a) It is unlawful:

72 (i) for [~~any~~] a person knowingly and intentionally to possess or use a controlled
73 substance analog or a controlled substance, unless it was obtained under a valid prescription or
74 order, directly from a practitioner while acting in the course of the person's professional
75 practice, or as otherwise authorized by this chapter;

76 (ii) for [~~any~~] an owner, tenant, licensee, or person in control of [~~any~~] a building, room,
77 tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to
78 be occupied by persons unlawfully possessing, using, or distributing controlled substances in
79 any of those locations; or

80 (iii) for [~~any~~] a person knowingly and intentionally to possess an altered or forged
81 prescription or written order for a controlled substance.

82 (b) [~~Any~~] A person convicted of violating Subsection (2)(a)(i) with respect to:

83 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;
84 or

85 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
86 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
87 conviction is guilty of a third degree felony.

88 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
89 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater

90 penalty than provided in this Subsection (2).

91 (d) ~~[Any]~~ A person who violates Subsection (2)(a)(i) with respect to all other
92 controlled substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in
93 Section [58-37-4.2](#), or marijuana, is guilty of a class B misdemeanor. Upon a third conviction
94 the person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the
95 person is guilty of a third degree felony.

96 (e) ~~[Any]~~ A person convicted of violating Subsection (2)(a)(i) while inside the exterior
97 boundaries of property occupied by ~~[any]~~ a correctional facility as defined in Section [64-13-1](#)
98 or ~~[any]~~ a public jail or other place of confinement shall be sentenced to a penalty one degree
99 greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled
100 substances as listed in:

101 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an
102 indeterminate term as provided by law, and:

103 (A) the court shall additionally sentence the person convicted to a term of one year to
104 run consecutively and not concurrently; and

105 (B) the court may additionally sentence the person convicted for an indeterminate term
106 not to exceed five years to run consecutively and not concurrently; and

107 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an
108 indeterminate term as provided by law, and the court shall additionally sentence the person
109 convicted to a term of six months to run consecutively and not concurrently.

110 (f) ~~[Any]~~ A person convicted of violating Subsection (2)(a)(ii) or(iii) is:

111 (i) on a first conviction, guilty of a class B misdemeanor;

112 (ii) on a second conviction, guilty of a class A misdemeanor; and

113 (iii) on a third or subsequent conviction, guilty of a third degree felony.

114 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not
115 amounting to a violation of Section [76-5-207](#):

116 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's
117 body any measurable amount of a controlled substance; and

118 (ii) operates a motor vehicle as defined in Section [76-5-207](#) in a negligent manner,
119 causing serious bodily injury as defined in Section [76-1-601](#) or the death of another.

120 (h) A person who violates Subsection (2)(g) by having in the person's body:

121 (i) a controlled substance classified under Schedule I, other than those described in
122 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
123 degree felony;

124 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
125 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third
126 degree felony; or

127 (iii) ~~any~~ a controlled substance classified under Schedules III, IV, or V is guilty of a
128 class A misdemeanor.

129 (i) A person is guilty of a separate offense for each victim suffering serious bodily
130 injury or death as a result of the person's negligent driving in violation of Subsection(2)(g)
131 whether or not the injuries arise from the same episode of driving.

132 (j) The Administrative Office of the Courts shall report to the Division of Occupational
133 and Professional Licensing the name, case number, date of conviction, and if known, the date
134 of birth of each person convicted of violating Subsection (2)(a).

135 (3) Prohibited acts C -- Penalties:

136 (a) It is unlawful for ~~any~~ a person knowingly and intentionally:

137 (i) to use in the course of the manufacture or distribution of a controlled substance a
138 license number which is fictitious, revoked, suspended, or issued to another person or, for the
139 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a
140 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
141 person;

142 (ii) to acquire or obtain possession of, to procure or attempt to procure the
143 administration of, to obtain a prescription for, to prescribe or dispense to ~~any~~ a person known
144 to be attempting to acquire or obtain possession of, or to procure the administration of ~~any~~ a
145 controlled substance by misrepresentation or failure by the person to disclose receiving ~~any~~ a
146 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a
147 prescription or written order for a controlled substance, or the use of a false name or address;

148 (iii) to make ~~any~~ a false or forged prescription or written order for a controlled
149 substance, or to utter the same, or to alter ~~any~~ a prescription or written order issued or written
150 under the terms of this chapter; or

151 (iv) to make, distribute, or possess ~~any~~ a punch, die, plate, stone, or other thing

152 designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark,
153 imprint, or device of another or any likeness of any of the foregoing upon any drug or container
154 or labeling so as to render [any] a drug a counterfeit controlled substance.

155 (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A
156 misdemeanor.

157 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third
158 degree felony.

159 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.

160 (4) Prohibited acts D -- Penalties:

161 (a) Notwithstanding other provisions of this section, a person not authorized under this
162 chapter who commits any act that is unlawful under Subsection (1)(a)[, Section 58-37a-5,] or
163 Section 58-37b-4 is upon conviction subject to the penalties and classifications under this
164 Subsection (4) if the trier of fact finds the act is committed:

165 (i) in a public or private elementary or secondary school or on the grounds of any of
166 those schools during the hours of 6 a.m. through 10 p.m.;

167 (ii) in a public or private vocational school or postsecondary institution or on the
168 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

169 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or
170 facility's hours of operation;

171 (iv) in a public park, amusement park, arcade, or recreation center when the public or
172 amusement park, arcade, or recreation center is open to the public;

173 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;

174 (vi) in or on the grounds of a library when the library is open to the public;

175 (vii) within [any] an area that is within 100 feet of any structure, facility, or grounds
176 included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

177 (viii) in the presence of a person younger than 18 years of age, regardless of where the
178 act occurs; or

179 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
180 distribution of a substance in violation of this section to an inmate or on the grounds of [any] a
181 correctional facility as defined in Section 76-8-311.3.

182 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony

183 and shall be imprisoned for a term of not less than five years if the penalty that would
184 otherwise have been established but for this Subsection (4) would have been a first degree
185 felony.

186 (ii) Imposition or execution of the sentence may not be suspended, and the person is
187 not eligible for probation.

188 (c) If the classification that would otherwise have been established would have been
189 less than a first degree felony but for this Subsection (4), a person convicted under this
190 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
191 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

192 (d) (i) If the violation is of Subsection (4)(a)(ix):

193 (A) the person may be sentenced to imprisonment for an indeterminate term as
194 provided by law, and the court shall additionally sentence the person convicted for a term of
195 one year to run consecutively and not concurrently; and

196 (B) the court may additionally sentence the person convicted for an indeterminate term
197 not to exceed five years to run consecutively and not concurrently; and

198 (ii) the penalties under this Subsection (4)(d) apply also to [~~any~~] a person who, acting
199 with the mental state required for the commission of an offense, directly or indirectly solicits,
200 requests, commands, coerces, encourages, or intentionally aids another person to commit a
201 violation of Subsection (4)(a)(ix).

202 (e) It is not a defense to a prosecution under this Subsection (4) that:

203 (i) the actor mistakenly believed the individual to be 18 years of age or older at the
204 time of the offense or was unaware of the individual's true age; [~~nor that~~] or

205 (ii) the actor mistakenly believed that the location where the act occurred was not as
206 described in Subsection (4)(a) or was unaware that the location where the act occurred was as
207 described in Subsection (4)(a).

208 (5) [~~Any~~] A violation of this chapter for which no penalty is specified is a class B
209 misdemeanor.

210 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of
211 guilty or no contest to a violation or attempted violation of this section or a plea which is held
212 in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction,
213 even if the charge has been subsequently reduced or dismissed in accordance with the plea in

214 abeyance agreement.

215 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a
216 conviction that is:

217 (i) from a separate criminal episode than the current charge; and

218 (ii) from a conviction that is separate from any other conviction used to enhance the
219 current charge.

220 (7) A person may be charged and sentenced for a violation of this section,
221 notwithstanding a charge and sentence for a violation of any other section of this chapter.

222 (8) (a) ~~[Any]~~ A penalty imposed for violation of this section is in addition to, and not
223 in lieu of, ~~[any]~~ a civil or administrative penalty or sanction authorized by law.

224 (b) ~~[Where]~~ When a violation of this chapter violates a federal law or the law of
225 another state, conviction or acquittal under federal law or the law of another state for the same
226 act is a bar to prosecution in this state.

227 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a
228 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled
229 substance or substances, is prima facie evidence that the person or persons did so with
230 knowledge of the character of the substance or substances.

231 (10) This section does not prohibit a veterinarian, in good faith and in the course of the
232 veterinarian's professional practice only and not for humans, from prescribing, dispensing, or
233 administering controlled substances or from causing the substances to be administered by an
234 assistant or orderly under the veterinarian's direction and supervision.

235 (11) Civil or criminal liability may not be imposed under this section on:

236 (a) ~~[any]~~ a person registered under this chapter who manufactures, distributes, or
237 possesses an imitation controlled substance for use as a placebo or investigational new drug by
238 a registered practitioner in the ordinary course of professional practice or research; or

239 (b) ~~[any]~~ a law enforcement officer acting in the course and legitimate scope of the
240 officer's employment.

241 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,
242 as defined in ~~[Subsection 58-37-2(1)(v)]~~ Section 58-37-2, who uses, possesses, or transports
243 peyote for bona fide traditional ceremonial purposes in connection with the practice of a
244 traditional Indian religion as defined in ~~[Subsection 58-37-2(1)(w)]~~ Section 58-37-2.

245 (b) In a prosecution alleging violation of this section regarding peyote as defined in
246 [~~Subsection 58-37-4(2)(a)(iii)(V)~~] Section 58-37-4, it is an affirmative defense that the peyote
247 was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes
248 in connection with the practice of a traditional Indian religion.

249 (c) (i) The defendant shall provide written notice of intent to claim an affirmative
250 defense under this Subsection (12) as soon as practicable, but not later than 10 days before
251 trial.

252 (ii) The notice shall include the specific claims of the affirmative defense.

253 (iii) The court may waive the notice requirement in the interest of justice for good
254 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

255 (d) The defendant shall establish the affirmative defense under this Subsection (12) by
256 a preponderance of the evidence. If the defense is established, it is a complete defense to the
257 charges.

258 (13) (a) It is an affirmative defense that the person produced, possessed, or
259 administered a controlled substance listed in Section 58-37-4.2 if the person was:

260 (i) ~~was~~ engaged in medical research; and

261 (ii) ~~was~~ a holder of a valid license to possess controlled substances under Section
262 58-37-6.

263 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed
264 a controlled substance listed in Section 58-37-4.2.

265 (14) It is an affirmative defense that the person possessed, in the person's body, a
266 controlled substance listed in Section 58-37-4.2 if:

267 (a) the person was the subject of medical research conducted by a holder of a valid
268 license to possess controlled substances under Section 58-37-6; and

269 (b) the substance was administered to the person by the medical researcher.

270 (15) The application of any increase in penalty under this section to a violation of
271 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This
272 Subsection (15) takes precedence over any conflicting provision of this section.

273 (16) (a) It is an affirmative defense to an allegation of the commission of an offense
274 listed in Subsection (16)(b) that the person:

275 (i) reasonably believes that the person or another person is experiencing an overdose

276 event due to the ingestion, injection, inhalation, or other introduction into the human body of a
277 controlled substance or other substance;

278 (ii) reports in good faith the overdose event to a medical provider, an emergency
279 medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911
280 emergency call system, or an emergency dispatch system, or the person is the subject of a
281 report made under this Subsection (16);

282 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the
283 actual location of the overdose event that facilitates responding to the person experiencing the
284 overdose event;

285 (iv) remains at the location of the person experiencing the overdose event until a
286 responding law enforcement officer or emergency medical service provider arrives, or remains
287 at the medical care facility where the person experiencing an overdose event is located until a
288 responding law enforcement officer arrives;

289 (v) cooperates with the responding medical provider, emergency medical service
290 provider, and law enforcement officer, including providing information regarding the person
291 experiencing the overdose event and any substances the person may have injected, inhaled, or
292 otherwise introduced into the person's body; and

293 (vi) is alleged to have committed the offense in the same course of events from which
294 the reported overdose arose.

295 (b) The offenses referred to in Subsection (16)(a) are:

296 (i) the possession or use of less than 16 ounces of marijuana;

297 (ii) the possession or use of a scheduled or listed controlled substance other than
298 marijuana; and

299 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,
300 Imitation Controlled Substances Act.

301 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not
302 include seeking medical assistance under this section during the course of a law enforcement
303 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

304 (17) If any provision of this chapter, or the application of any provision to any person
305 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the
306 invalid provision or application.

307 (18) A legislative body of a political subdivision may not enact an ordinance that is
308 less restrictive than any provision of this chapter.

309 (19) If a minor who is under 18 years of age is found by a court to have violated this
310 section, the court may order the minor to complete:

311 (a) [~~the minor to complete~~] a screening as defined in Section 41-6a-501;

312 (b) [~~the minor to complete~~] an assessment as defined in Section 41-6a-501 if the
313 screening indicates an assessment to be appropriate; and

314 (c) [~~the minor to complete~~] an educational series as defined in Section 41-6a-501 or
315 substance use disorder treatment as indicated by an assessment.